

106TH CONGRESS
2D SESSION

S. 3210

To amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process for consumers and employees.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17 (legislative day, SEPTEMBER 22), 2000

Mr. SESSIONS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process for consumers and employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer and Em-
5 ployee Arbitration Bill of Rights”.

6 **SEC. 2. ELECTION OF ARBITRATION.**

7 (a) CONSUMER AND EMPLOYMENT CONTRACTS.—
8 Chapter 1 of title 9, United States Code, is amended by
9 adding at the end the following:

1 **“§ 17. Consumer and employment contracts**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘consumer contract’ means any
4 written, standardized form contract between the par-
5 ties to a consumer transaction;

6 “(2) the term ‘consumer transaction’ means the
7 sale or rental of goods, services, or real property, in-
8 cluding an extension of credit or the provision of any
9 other financial product or service, to an individual in
10 a transaction entered into primarily for personal,
11 family, or household purposes; and

12 “(3) the term ‘employment contract’—

13 “(A) means a uniform, employer promul-
14 gated plan that covers all employees in a com-
15 pany, facility, or work grade, and that may
16 cover legally protected rights or statutory
17 rights; and

18 “(B) does not include any individually ne-
19 gotiated executive employment agreements.

20 “(b) FAIR DISCLOSURE.—In order to be binding on
21 the parties to a consumer contract or an employment con-
22 tract, an arbitration clause in such contract shall—

23 “(1) have a printed heading in bold, capital let-
24 ters entitled ‘ARBITRATION CLAUSE’, which heading
25 shall be printed in letters not smaller than ½ inch
26 in height;

1 “(2) explicitly state whether participation with-
2 in the arbitration program is mandatory or optional;

3 “(3) identify a source that a consumer can con-
4 tact for additional information on costs and fees and
5 on all forms and procedures necessary for effective
6 participation in the arbitration program; and

7 “(4) provide notice that all parties retain the
8 right to resolve a dispute in a small claims court, if
9 such dispute falls within the jurisdiction of that
10 court and the claim is for less than \$50,000 in total
11 damages.

12 “(c) PROCEDURAL RIGHTS.—If a consumer contract
13 or employment contract provides for the use of arbitration
14 to resolve a dispute arising out of or relating to the con-
15 tract, each party to the contract shall be afforded the fol-
16 lowing rights, in addition to any rights provided by the
17 contract:

18 “(1) COMPETENCE AND NEUTRALITY OF ARBI-
19 TRATOR AND ADMINISTRATIVE PROCESS.—

20 “(A) IN GENERAL.—Each party to the dis-
21 pute (referred to in this section as a ‘party’)
22 shall be entitled to a competent, neutral arbi-
23 trator and an independent, neutral administra-
24 tion of the dispute.

1 “(B) ARBITRATOR.—Each party shall have
2 an equal voice in the selection of the arbitrator,
3 who—

4 “(i) shall comply with the Code of
5 Ethics for Arbitrators in Commercial Dis-
6 putes of the American Arbitration Associa-
7 tion and the State bar association of which
8 the arbitrator is a member;

9 “(ii) shall have no personal or finan-
10 cial interest in the results of the pro-
11 ceedings in which the arbitrator is ap-
12 pointed and shall have no relation to the
13 underlying dispute or to the parties or
14 their counsel that may create an appear-
15 ance of bias; and

16 “(iii) prior to accepting appointment,
17 shall disclose all information that might be
18 relevant to neutrality, including service as
19 an arbitrator or mediator in any past or
20 pending case involving any of the parties
21 or their representatives, or that may pre-
22 vent a prompt hearing.

23 “(C) ADMINISTRATION.—The arbitration
24 shall be administered by an independent, neu-
25 tral alternative dispute resolution organization

1 to ensure fairness and neutrality and prevent ex
2 parte communication between parties and the
3 arbitrator.

4 “(2) APPLICABLE LAW.—In resolving a dispute,
5 the arbitrator—

6 “(A) shall be governed by the same sub-
7 stantive law that would apply under conflict of
8 laws principles applicable in a court of the
9 forum in which the consumer or employee re-
10 sided at the time the contract was entered into;
11 and

12 “(B) shall be empowered to grant whatever
13 relief would be available in court under law or
14 equity.

15 “(3) REPRESENTATION.—Each party shall have
16 the right to be represented by an attorney, or other
17 representative as permitted by State law, at the ex-
18 pense of that party.

19 “(4) HEARING.—

20 “(A) IN GENERAL.—Each party shall be
21 entitled to a fair arbitration hearing (referred
22 to in this section as a ‘hearing’) with adequate
23 notice and an opportunity to be heard.

24 “(B) ELECTRONIC OR TELEPHONIC
25 MEANS.—Subject to subparagraph (C), in order

1 to reduce cost, the arbitrator may hold a hear-
2 ing by electronic or telephonic means or by a
3 submission of documents.

4 “(C) FACE-TO-FACE MEETING.—Each
5 party shall have the right to require a face-to-
6 face hearing, which hearing shall be held at a
7 location that is reasonably convenient for the
8 party who is the consumer or employee, unless
9 in the interest of fairness the arbitrator deter-
10 mines otherwise, in which case the arbitrator
11 shall use the process described in section 1391
12 of title 28 to determine the venue for the hear-
13 ing.

14 “(5) EVIDENCE.—With respect to any
15 hearing—

16 “(A) each party shall have the right to
17 present evidence at the hearing and, for this
18 purpose, each party shall grant access to all in-
19 formation reasonably relevant to the dispute to
20 the other parties, subject to any applicable
21 privilege or other limitation on discovery under
22 applicable State law;

23 “(B) consistent with the expedited nature
24 of arbitration, relevant and necessary pre-

1 hearing depositions shall be available to each
2 party at the direction of the arbitrator; and

3 “(C) the arbitrator shall—

4 “(i) make reasonable efforts to main-
5 tain the privacy of the hearing to the ex-
6 tent permitted by applicable State law; and

7 “(ii) consider appropriate claims of
8 privilege and confidentiality in addressing
9 evidentiary issues.

10 “(6) CROSS EXAMINATION.—Each party shall
11 have the right to cross examine witnesses presented
12 by the other parties at a hearing.

13 “(7) RECORD OF PROCEEDING.—Any party
14 seeking a stenographic record of a hearing shall
15 make arrangements directly with a stenographer and
16 shall notify the other parties of these arrangements
17 not less than 3 days in advance of the hearing. The
18 requesting party or parties shall pay the costs of ob-
19 taining the record. If the transcript is agreed by the
20 parties, or determined by the arbitrator to be the of-
21 ficial record of the proceeding, it shall be provided
22 to the arbitrator and made available to the other
23 parties for inspection, at a date, time, and place de-
24 termined by the arbitrator.

1 “(8) TIMELY RESOLUTION.—Upon submission
 2 of a complaint by the claimant, the respondent shall
 3 have 30 days to file an answer. Thereafter, the arbi-
 4 trator shall direct each party to file documents and
 5 to provide evidence in a timely manner so that the
 6 hearing may be held not later than 90 days after the
 7 filing of the answer. In extraordinary circumstances,
 8 the arbitrator may grant a limited extension of these
 9 time limits to a party, or the parties may agree to
 10 an extension. The arbitrator shall file a decision with
 11 each party not later than 30 days after the hearing.

12 “(9) WRITTEN DECISION.—The arbitrator shall
 13 provide each party with a written explanation of the
 14 factual and legal basis for the decision. This written
 15 decision shall describe the application of an identi-
 16 fied contract term, statute, or legal precedent. The
 17 decision of the arbitrator shall be final and binding,
 18 subject only to the review provisions in subsection
 19 (d).

20 “(10) EXPENSES.—The arbitrator or inde-
 21 pendent arbitration administration organization, as
 22 applicable, shall have the authority to—

23 “(A) provide for reimbursement of arbitra-
 24 tion fees to the claimant, in whole or in part,

1 as part of the remedy in accordance with appli-
 2 cable law or in the interests of justice; and

3 “(B) waive, defer, or reduce any fee or
 4 charge due from the claimant in the event of
 5 extreme hardship.

6 “(11) SMALL CLAIMS OPT OUT.—Each party
 7 shall have the right to opt out of binding arbitration
 8 and into the small claims court for the forum, if
 9 such court has jurisdiction over the claim. For pur-
 10 poses of this paragraph, no court with jurisdiction to
 11 hear claims in excess of \$50,000 shall be considered
 12 to be a small claims court.

13 “(d) DENIAL OF RIGHTS.—

14 “(1) DENIAL OF RIGHTS BY PARTY MIS-
 15 CONDUCT.—

16 “(A) IN GENERAL.—At any time during an
 17 arbitration involving a consumer contract or
 18 employment contract, any party may file a mo-
 19 tion with the arbitrator asserting that the other
 20 party has deprived the movant of 1 or more
 21 rights granted by this section and seeking re-
 22 lief.

23 “(B) AWARD BY ARBITRATOR.—If the ar-
 24 bitrator determines that the movant has been
 25 deprived of a right granted by this section by

the other party, the arbitrator shall award the movant a monetary amount, which shall not exceed the reasonable expenses incurred by the movant in filing the motion, including attorneys' fees, unless the arbitrator finds that—

“(i) the motion was filed without the movant’s first making a good faith effort to obtain discovery or the realization of another right granted by this section;

“(ii) the opposing party’s nondisclosure, failure to respond, response, or objection was substantially justified; or

“(iii) the circumstances otherwise make an award of expenses unjust.

“(2) DENIAL OF RIGHTS BY ARBITRATOR.—A losing party in an arbitration may file a petition in the district court of the United States in the forum in which the consumer or employee resided at the time the contract was entered into to assert that the arbitrator violated 1 or more of the rights granted to the party by this section and to seek relief. In order to grant the petition, the court must find clear and convincing evidence that 1 or more actions or omissions of the arbitrator resulted in a deprivation of a right of the petitioner under this section that

1 was not harmless. If such a finding is made, the
 2 court shall order a rehearing before a new arbitrator
 3 selected in the same manner as the original arbi-
 4 trator as the exclusive judicial remedy provided by
 5 this section.”.

6 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 7 The table of sections for chapter 1 of title 9, United States
 8 Code, is amended by adding at the end the following:

“17. Consumer and employment contracts.”.

9 (c) **EFFECTIVE DATE.**—The amendments made by
 10 this section shall apply to any consumer contract or em-
 11 ployment contract entered into after the date that is 6
 12 months after the date of enactment of this Act.

13 **SEC. 3. LIMITATION ON CLAIMS.**

14 Except as otherwise expressly provided in this Act,
 15 nothing in this Act may be construed to be the basis for
 16 any claim in law or equity.

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